

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Criminal No. 11-59 (MJD/FLN)

Plaintiff,

v.

**ORDER AND
REPORT &
RECOMMENDATION**

Hugo Beltran-Aragon,

Defendant.

Deidre Y. Aanstad, Assistant United States Attorney, for Plaintiff.
Charles L. Hawkins for Defendant.

THIS MATTER came before the undersigned United States Magistrate Judge on March 24, 2011 on the Government's and Defendant's pretrial motions.

Based upon all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that the Government's Motion for Discovery Pursuant to Federal Rules of Criminal Procedure 16(b), 12.1, 12.2 and 26.2 [#9] is **GRANTED**.

Based upon all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Defendant's Motions are **GRANTED, in part**, and **DENIED, in part**, as follows:

1. Defendant's Motion for Disclosure of Impeaching Information [#11] is **GRANTED** to the extent required by *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny.
2. Defendant's Motion for Early Disclosure of Jencks Act Material [#12] is **DENIED**. The Government, however, will voluntarily provide the material to Defendant no later than five (5) days before trial.
3. Defendant's Motion for Discovery and Inspection [#13] is **GRANTED** to the extent required by the Federal Rules of Criminal Procedure.
4. Defendant's Motion for Participation by Counsel in Voir Dire [#14] is **DENIED**,

except to the extent the trial judge in his discretion decides to permit it.

5. Defendant's Motion for Disclosure of Rule 404(b) Evidence [#15] is **GRANTED**. The Government shall make its disclosures to Defendant on or before April 4, 2011.

RECOMMENDATION

The Government stated at the hearing that Defendant's statements of June 8, 2010 and July 22, 2010 were made while Defendant was in custody and without the provision of Miranda warnings. Those statements should be suppressed. Defense counsel conceded at the hearing that Defendant's statement of February 7, 2011 was voluntarily made after a valid Miranda warning and is therefore admissible. It is therefore **RECOMMENDED** that Defendant's Motion to Suppress Confessions, Admissions or Statements [#16] be **GRANTED, in part**, and **DENIED, in part**, as follows:

1. With respect to Defendant's statements of June 8, 2010 and July 22, 2010 the motion should be **GRANTED**.
2. With respect to Defendant's statement of February 7, 2011 the motion should be **DENIED**.

A search was conducted in 2003 related to a different criminal case involving Defendant. The Government represented at the hearing that it does not intend to offer any evidence obtained during that search. It appears that the Defendant's Motion to Suppress Evidence Obtained Through Illegal Search [#17] is moot. It is therefore **RECOMMENDED** that Defendant's Motion to Suppress Evidence Obtained Through Illegal Search[#17] be **DENIED as moot**.

DATED: April 4, 2011

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **April 18, 2011**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within fourteen (14) days after service thereof. All briefs filed under the rules shall be limited to 3,500 words. A judge shall make a de novo determination of those portions to which objection is made.

Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and cause to be filed by **April 18, 2011**, a complete transcript of the hearing.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.